

**JOINT POWERS AGREEMENT
BETWEEN THE
NEW MEXICO ENERGY, MINERALS AND
NATURAL RESOURCES DEPARTMENT
AND
THE COUNTY OF SANTA FE**

THIS AGREEMENT is made and entered into by the State of New Mexico Energy, Minerals and Natural Resources Department (EMNRD), State Parks Division (Division) and the County of Santa Fe (County) pursuant to the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1, et seq. This Agreement's intent is to establish a long-term partnership between EMNRD and the County in order to operate, maintain, and improve the facility currently known as Cerrillos Hills Historic Park (CHHP) in the Cerrillos Hills, Santa Fe County, to be known as Cerrillos Hills State Park ("State Park").

EMNRD and the County are public agencies and are authorized by law to enter into this Joint Powers Agreement, and the common power to be exercised is as follows:

WHEREAS, the County operates the Open Space and Trails Program which is charged with creating a network of cultural, historical, recreational and natural open spaces and trails throughout Santa Fe County; and

WHEREAS, pursuant to NMSA 1978, Section 9-5A-4, EMNRD has the authority to maintain, manage, and supervise all state parks and state owned or leased recreation areas; and

WHEREAS, pursuant to NMSA 1978, Sections 3-18-1, 3-18-18 and 4-37-1, the County is authorized to enter into contracts or leases to operate public parks; and

WHEREAS, CHHP was acquired as open space by the County in 2000 and includes a 1,098-acre tract located in the historic Cerrillos Mining District, a New Mexico Cultural Property, approximately one mile north of the unincorporated village of Cerrillos; and

WHEREAS, the County has operated CHHP as a public park since 2003; and

WHEREAS, CHHP includes natural, cultural and recreational resources, is a significant natural and cultural landscape and serves as an important community asset and tourist attraction in New Mexico; and

WHEREAS, the New Mexico State Legislature (Legislature) passed House Joint Memorial 8 in 2005, authorizing the creation of the State Park in Santa Fe County, and specifically authorizing EMNRD and the Division to enter into agreements with the County to create the State Park and to acquire land for the State Park, all pursuant to NMSA 1978, Section 16-2-11; and

WHEREAS, the Division conducted a feasibility study in 2006, dated March 10, 2006, with public stakeholder meetings and determined that CHHP had the attributes and values which would warrant State Park status under the criteria set forth in statute (NMSA 1978, Section 16-2-11); and

WHEREAS, the Legislature has appropriated certain funds for the operation of the Park and for improvements to the infrastructure of a State Park at CHHP; and

WHEREAS, EMNRD and the County desire to protect and preserve the resources within the CHHP; and

WHEREAS, EMNRD and the County desire to form a long-term relationship in the management of CHHP, whereby the County would remain the owner of the property and the Division would manage the property as a State Park subject to the County's rights and obligations as herein defined; and

WHEREAS, EMNRD and the County desire to enter into this Agreement for management effectiveness and administrative efficiency and to facilitate and carry out the intention of previous and any future legislative appropriations.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE METHOD BY WHICH THIS PURPOSE SHALL BE ACCOMPLISHED IS AS FOLLOWS:

1. **Property Management:**

A. Property Description.

CHHP consists of 1,098 acres, and the County has provided EMNRD and the Division copies of deeds of conveyance through which it acquired title to CHHP and a survey quality map delineating the entire property at CHHP and defining the management area for the State Park. This description and map are included in Attachment A, and incorporated herein by reference.

B. Property Management.

EMNRD established the State Park as a unit of the New Mexico State Park System on property described in Paragraph 1, effective August 1, 2008, and shall manage the State Park pursuant to relevant state statutes (in particular, NMSA 1978, Sections 9-5A-1 *et seq.*, and Sections 16-2-1 *et seq.*), regulations (in particular, Title 19 NMAC Chapter 5), and policies and procedures that pertain to State Parks and to the operation of state government. The Division shall manage the State Park as a day-use park as defined in NMAC 19.5.2.11, which sections precludes overnight uses including camping.

The Division shall determine the management approach and framework for the State Park. The Division shall have complete decision-making authority over the State Park's day-to-day operations unless otherwise specifically delegated to the County or another entity or specifically addressed in this Joint Powers Agreement. The Division, however, shall consult regularly and proactively with the County on the State Park's management. The Division and the County shall meet, at a minimum, no later than July 1 annually and may meet more frequently as needed per the request of either party, to discuss the State Park's operations, implementation and any proposed amendment to the management plan, plans for the subsequent fiscal year, and any other issue affecting the State Park. Additionally, the Division and the County will conduct an annual meeting with the public to review the Park's management and operations.

Any management or access problems identified by either party shall be worked to a satisfactory conclusion by both parties and be documented in writing. County employees shall have unfettered access to the State Park in their official capacity.

Upon implementation of the JPA, the Division shall use the County-developed management plan until the Division creates and implements its own management plan. The Division shall prepare a park management plan for the State Park within two (2) years of this Agreement's effective date and may use the County-developed management plan as the basis of the new management plan. The County shall participate on the core management plan team. The Division shall not finalize the management plan without the County's approval. The Division shall retain final decision-making authority over the implementation of the park management plan with regard to day-to-day operations and management of the County property, the Visitor Center site and any requests to the New Mexico Legislature for capital expenditures on the Visitor Center site. This shall not preclude the County from proposing capital projects on County property or in consultation with the Division funded by the County. As part of the management plan, the Division and the County shall jointly develop a listing of proposed capital improvement projects. Neither party in any instance shall implement a capital improvement project that shall obligate operational funding and maintenance by the other party without the other party's written consent.

The County shall make the Division aware of any natural or cultural resource protection projects, mitigation issues and education programs currently being performed on County property within the State Park. Both parties shall abide by applicable state and federal cultural and natural resource protection laws. The Division shall be the lead agency regarding compliance with natural and cultural resource protection laws during capital improvement projects within the State Park. The County shall support compliance efforts by providing available information regarding resources to the Division upon request.

The Division shall coordinate with the County regarding road access and road maintenance within the State Park. The County shall be responsible for maintenance of

County Road 59 within the State Park.

The Division shall construct a visitor center and administrative office for the State Park on state-owned land with state funds that will include multi-use community space. The Division shall provide, at no charge, space to the County in the visitor center for administrative and public education purposes, as described in writing by the Division, as well as offer opportunities to the County to conduct other educational programs in the State Park, to be coordinated with the Division.

The Division is authorized to collect fees based on the Division's regulations and shall use fees collected in accordance with state law. Use of the State Park by County employees in their official capacity or for official meetings sponsored by the County, shall be free of charge, provided the Division is given advance written notice of the official meetings and space is available for that purpose.

C. Lease Agreement.

Pursuant to NMSA 1978, Sections 16-2-11 and 16-2-13, the Division's legal interest in the County's lands covered by this Agreement is premised upon the lease between EMNRD and the County, which is attached hereto as Attachment B, and incorporated herein by reference.

D. Acknowledgement.

The Division shall acknowledge the County as the landowner of the State Park on entrance signs to the park and at the park visitor center, and shall acknowledge the County in other signs, brochures and other literature as both parties deem appropriate.

2. **Funding:**

EMNRD agrees to be the primary party responsible for the State Park's operations and infrastructure costs. The Division shall request in its annual budget such sums as it deems necessary to operate the State Park and to maintain and improve the State Park's infrastructure.

After the date of implementation of this JPA, either party may transfer operational and capital funds to the other party to support park operations and improvements, subject to applicable state law.

A. Operating Expenses.

The State Park's operating and maintenance expenses shall include employees' wages and salaries, and other costs involved in operating the State Park other than capital costs. EMNRD shall have sole responsibility for these costs. State Park fees, as identified in Division regulations, shall be applied as a revenue source for the State Park's operational costs pursuant to legislative appropriation, together with such other appropriations as the New Mexico Legislature may approve for the State Park for this purpose.

B. Capital Improvements.

The Division has been allocated funds by the State Legislature for capital improvements at the State Park and may receive other such funds in the future. The Division shall manage a capital infrastructure program for the State Park. The park management plan to be completed under Paragraph 1.B shall include a capital projects list ranked in priority order. The Division will endeavor to complete capital projects in priority order, subject to changing conditions and availability of funds and staff resources to complete such projects.

In addition to the preparation of the park management plan, the Division shall consult the County regarding specifics of the planning and implementation of large-scale capital or resource-oriented projects proposed at the State Park. The County shall review and approve or disapprove construction plans for capital improvements upon County-owned property within 30 calendar days of receiving plans. If the County does not respond to a Division request for review within 30 calendar days of plan transmittal, the plans shall be considered approved by the County as drafted. The County's approval of the management plan, including the capital project listing, shall authorize the Division to proceed with listed projects, pending available funding.

Nothing herein shall prevent the County from contributing to the costs of operations, infrastructure, and any projects at the State Park. The County shall coordinate with the Division on any proposed projects or funding for the State Park to determine if partnerships are possible or to coordinate in terms of State Park management. In no case, shall either party be obligated to invest capital outlay funding in excess of funding specifically appropriated to either party for improvements at the State Park.

3. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE SECRETARY OF THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION. It shall expire on July 1, 2032 unless earlier terminated pursuant to Paragraph 4 or Paragraph 5, below.

4. Termination: At all times during this Agreement's term, either party may terminate the Agreement for cause (i.e. any violation of this Agreement's terms). The

remainder of this Paragraph deals with terminations of this Agreement without cause.

In the first five calendar years after this Agreement's effective date, neither party may terminate this Agreement without cause. After the first five calendar years, either party may terminate this Agreement upon delivery of a written notice to the other at least three hundred sixty-five (365) days prior to the intended date of termination. By such termination, neither party may nullify or avoid any obligation required to have been performed prior to termination. If the County or if EMNRD terminates this Agreement, the Division shall close the State Park and return management to the County of County-owned property within the State Park.

5. **Appropriations:** The terms of this Agreement are contingent upon sufficient appropriations to operate the State Park and authorizations being granted by the New Mexico State Legislature and the Santa Fe County Commission, as appropriate. If sufficient appropriations or authorizations are not granted, either party may terminate this Agreement, or suspend performance pending approval of sufficient appropriations or authorizations, upon written notice from one to the other, regardless of any other provisions in this Agreement. Alternatively, should the Legislature appropriate or authorize less than the sufficient amount for park operations to be carried out through this Agreement, the parties may agree to amend this Agreement or short term management practices to continue to operate the park based upon the funds actually appropriated or authorized. Either party's decision as to whether sufficient appropriations are available shall be final, binding and accepted by the other.

6. **Subcontracting:** Neither party shall subcontract any portion of the day-to-day operational services to be performed under this Agreement or obligate itself in any manner to any third party, with respect to any rights or responsibilities under this Agreement, without the prior written approval from the EMNRD Secretary or Santa Fe County Commission.

7. **Strict Accountability for Receipts and Disbursements:** Both parties shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EMNRD, the County, DFA and the New Mexico State Auditor upon request, and shall maintain all such records for three (3) years after this Agreement has expired or has been terminated.

8. **Disposition, Division or Distribution of Property; Return of Surplus Funds:** Upon expiration or termination of this Agreement, if either party has property or funds in its possession belonging to the other, the property and the funds shall be returned to each party, and if less than the original amount of property or funds contributed remains, then returns shall be in proportion to the parties' original contributions. Any permanent improvements to County real property shall become County property in the event of a termination of this Agreement, at no additional cost to the County, subject to Paragraph 1.B., above.

9. **Equal Opportunity Compliance:** Both parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, both parties agree to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, or, if the employer has fifty or more employees, spousal affiliation, or, if the employer has fifteen or more employees, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If either party is found not to be in compliance with these requirements during the life of this Agreement, that party agrees to take appropriate steps to correct these deficiencies.

10. **Compliance with Funding Source Conditions:** Both parties shall comply with all applicable state and federal statutes and regulations that the funding source imposes.

11. **Insurance Coverage:** Each party shall be solely responsible for any liability arising from personal injury or damage to persons or property occasioned by its own agents or employees, contractors or subcontractors. The liability of the parties shall be subject in all cases to the immunities and limitations of the Tort Claims Act, NMSA 1978, Sections 41-4-1 *et seq.*, and any amendments thereto. The County shall provide EMNRD a statement indicating that the activities of the County's employees or its agents, as described in this Agreement are covered by insurance secured in accordance with any method allowed by applicable law, including self-insurance, pooling of self-insured reserves or insurance provided by a third party, no later than fifteen (15) calendar days after this Agreement's execution. The County shall maintain such insurance coverage (which shall not be required of the buildings or structures otherwise comprising the State Park) so long as this Agreement is in effect. Failure to maintain such coverage is reason for this Agreement's immediate termination. The County shall notify EMNRD prior to cancellation or expiration of any insurance required under this Agreement. Further, the parties agree to maintain the following insurance coverage for activities described in this Agreement:

A. Workers' Compensation protection that complies with the requirements of the New Mexico Workers' Compensation Act, NMSA 1978, Sections 52-1-1, *et seq.*, if applicable.

B. Comprehensive public liability protection covering property damage and personal injury liability that may arise under this Agreement and any amendments hereto, in amounts equal or greater than liability limits set forth in NMSA 1978, Section 41-4-19, as it may be amended from time to time.

12. **Amendment:** This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and approved by the

Secretary of the New Mexico Department of Finance and Administration.

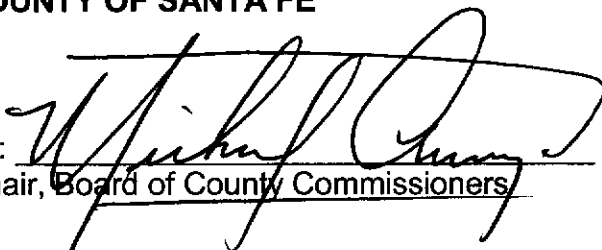
IN WITNESS WHEREOF, the parties have herein set their hand.

**STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES
DEPARTMENT**

By: 
Cabinet Secretary or Designee

Date: 8/19/09

COUNTY OF SANTA FE

By: 
Chair, Board of County Commissioners

Date: 6/30/09

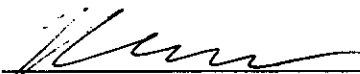
ATTEST:

By: 
County Clerk

Date: 6/30/09

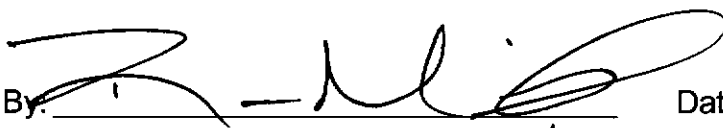


APPROVAL AS TO FORM AND LEGAL SUFFICIENCY:

By: 
County Attorney

Date: 8-6-09

STATE OF NEW MEXICO, DEPARTMENT OF FINANCE AND ADMINISTRATION

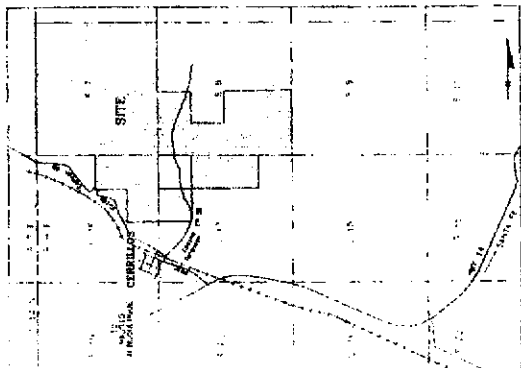
By: 
PK

Date: 9/1/09

Santa Fe County Approval, Notes and Conditions:

[illegible]

ASST. DIR. OF INVEST.



Neighborhood Map

[illegible]

THE DEPT. OF THE ARMY
WASHINGTON, D. C. 20315

[illegible]

MULTIC NO. (FROM ASSessor PARCEL MAP)

1-043-082-400-382
1-048-083-300-864
1-048-083-418-811
1-049-083-417-403
1-044-083-081-064
1-044-083-446-134

670 12304

BORING INFORMATION FOR COUNTY CLERK			
OTHER	SECTION	TOWNSHIP	RANGE
1000	5	7	14 N
CH. 64 OF CANINE TOWNSHIP			

HIGH DESERT SURVEYING, INC.
PROFESSIONAL SURVEYING

1988 ASPEN DRIVE, SUITE 401
41120, 2ND FLR, 02024

DATE: 11/11/80
TIME: 11:00
FROM: (606) 438-8004
TO: (606) 438-1700
SUBJECT: (606) 438-1700

Surveys from Certification

[illegible]

Lynette L. ... NEW ME #120 DANCING/DUAL BURNING FOR THE 17451

Attachment B

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into between the County of Santa Fe (Lessor), and the New Mexico Energy, Minerals and Natural Resources Department, State Parks Division (Lessee):

WITNESSETH:

The parties hereto for due consideration, the adequacy of which is hereby acknowledged, covenant and agree as follows:

1. **Lease.** Lessor hereby rents and leases, and Lessee hereby accepts and receives, to occupy and use for State of New Mexico purposes, property (hereinafter referred to as the "Property") described in Joint Powers Agreement SHARE No. 000 ... 7371 (EMNRD No. 09-521-0500-0020) (Joint Powers Agreement) to operate and manage Cerrillos Hills State Park (the Park).
2. **Terms and Conditions.** Lessee shall operate and manage the Park in accord with the terms and conditions of the Joint Powers Agreement and terminable according to the same terms and conditions of said Joint Powers Agreement.
3. **Binding Effect.** The terms and provisions of this Lease are binding upon and shall inure to the benefit of the parties hereto, and their successors.
4. **Effective Date.** This Lease shall become effective upon approval of the Joint Powers Agreement by the Department of Finance and Administration and shall terminate on the date the Joint Powers Agreement terminates.
5. **Amendment.** This Lease shall not be altered, changed or amended except by instrument in writing, executed by all of the Parties hereto and shall only be done in a manner that corresponds to the same changed.

EXECUTED in duplicate originals on this 19 day of August, 2009.

COUNTY OF SANTA FE

By: [Signature]
Chair, Board of County Commissioners

Approved as to form
Santa Fe County Attorney

By: [Signature]
Date: 8-19-2009

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

By: [Signature]
Cabinet Secretary or Designee

ATTEST:

[Signature]
VALERIE ESPINOZA
COUNTY CLERK